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June 26, 2009

Total Pages: 6

Letter of Appeal

Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Re: Request for Waiver of Deadline of a Decision of the Universal Service
Administrator in regard to Westbury UFSD
CC Docket No. 02-6

Funding Year:	2006
Applicant Name:	Westbury UFSD
Billed Entity Number:	123856
Form 471 Application #:	538739
FRN:	1492354

Background

In FY 2006, Westbury UFSD (Westbury) received WAN services from Verizon Select Services (Verizon Select) at an annual cost of \$123,912. A discount of 87% was awarded for this service. Westbury paid the non-discounted portion to Verizon Select on 05/19/2008 with check # 252047, which Verizon Select accepted and cashed on 06/02/2008, proving the belief and understanding that Verizon Select would be filing a SPI for the discounted portion.

On October 27, 2008, it was uncovered that Verizon Select, due to various department and personnel changes, never filed a SPI with the Schools and Libraries Division for the discounted portion on this FRN. As a result, Verizon Select is now billing Westbury \$107,803.44 to recoup the discounted portion of its service. To further complicate the issue, due to a clerical error, an erroneous small BEAR amount was incorrectly filed against this FRN.

On October 27, 2008, at the request of Verizon Select, an Invoice Deadline Extension request was submitted to USAC, which was subsequently denied for the reason that "The extension request

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was not filed in a timely manner” as “Current guidelines and procedures require Invoice Deadline Extension requests to be filed by the end of the relevant invoice receipt period”.

On March 25, 2009, a Letter of Appeal to USAC was submitted. This appeal recognized that the denial of the Invoice Deadline Extension was in line with standard USAC procedures, but because of the special circumstances in this situation, asked for merit relief from these procedures. The applicant’s failure to fully utilize this funding was due to ministerial and clerical errors largely on the part of Verizon Select as the provider – covered by the FCC’s Bishop Perry and other Global Resolution Orders. More specifically, this appeal is consistent with the FCC appeals granted in the Canon-McMillan School District, et al, decision (DA 08-2385).

On April 24, 2009, the appeal of the denial of the Invoice Deadline Extension request was denied for the following reason: *“Current deadline guidelines and procedures do not allow approval for the reason submitted. Invoice Deadline Extension requests should be filed by the end of the relevant invoice receipt period for the service category of the FRN requiring an extension (120 days after the end of the service delivery date.) You did not demonstrate in your appeal that you filed an extension request in a timely manner. Therefore, the appeal is denied.”*

Discussion

Verizon Select has had personnel changes within its E-rate division. These staff changes resulted in their untimely realization that the FRN had not been paid by the SLD. These problems, which were beyond their control, led to their requesting that E-Rate Central file the Invoice Deadline Extension so that an invoice could be submitted to the SLD. USAC stated in their denial that an invoice extension should be filed in a timely manner, specifically *“120 days after the end of the service delivery date.”* When reviewing the current guidelines on the SLD website, there are NO guidelines for applicants stating that invoice extensions have to be filed 120 days after the last day to receive services.

USAC provides Invoice Deadline Extensions under certain conditions, one of which is for circumstances beyond the service provider’s control. In our Invoice Deadline Extension request we stated that due to Verizon Select not being aware that a Form 474 was not filed, Westbury under the belief that they were only to pay the non-discounted portion, and a clerical error whereby a small BEAR amount was incorrectly filed against this FRN, we were requesting more time to correctly re-invoice the SLD.

The FCC has granted numerous appeals for E-rate applicants when a procedural deadline was missed. These orders include: Bishop Perry, Alaska Gateway, State of Arkansas Department of Information Systems, and the Cannon-McMillan School District.¹

Highlighting the Alaska Gateway order, the commission stated *“given that the applicants missed a USAC procedural deadline and did not violate a Commission rule, we find that the complete rejection of each of these applicants is not warranted.”* We concur that submitting invoices on time rests on the applicant. However, there are instances where applicants should be given additional time to submit invoices. This is especially true in cases where the applicant is receiving discounted billing and believes that their service provider, in this case Verizon Select, is filing the necessary Form 474, and due to circumstances unforeseen and beyond the service

¹ Bishop Perry, FCC 06-54; Alaska Gateway, DA 06-1871; State of Arkansas Department of Information Systems, DA 08-1418; and Cannon-McMillan School District, DA 08-2385.

provider control, a deadline is missed, and no Commission rule has been violated by the applicant or the service provider.

In the Canon-McMillan School District decision (DA 08-2385, page 4, para. 6 and 7), the commission stated *"Generally, these applicants claim that staff changes or inadvertent errors on the part of their staff resulted in the late filing or failure to file the FCC Form 472 or FCC Form 474."* *"Moreover, we emphasize that these applicants missed a procedural deadline and did not violate a substantive rule. In the Bishop Perry Order, the Commission found that, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature does not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.²¹ This is especially true in these circumstances, where the applicants are at the end of the process and have already received service and complied with all other E-rate program rules to date."* It is important to highlight these issues, because we know that USAC sends notification letters to applicants if a Form 486 is not on file, but does not do so if a mode of payment is set and the approval of funds is set a de minimus amount as compared to the commitment amount when the deadline is approaching. If a notification letter had been sent out, consistent with the recommendations made by the FCC in both the Alaska Gateway and Arkansas decisions, we would have been aware that USAC had not received a substantive invoice on this FRN. This would have allowed us to investigate the issue, realize that an error was made, cancel the erroneous small BEAR, and let the service provider know that a Form 474 needed to be filed against this FRN.

Conclusion

Under the four decisions discussed, Westbury and Verizon Select should be given the same latitude for granting deadline extensions that previous decisions allowed for missed deadlines. Westbury and Verizon Select did not violate a Commission rule by missing the invoice deadline, but an Administrative procedural deadline. Finally, due to the fact there is no evidence of waste, fraud, or abuse, we kindly request the SLD to grant an invoice extension.

Respectfully submitted this twenty-sixth day of June, 2009.

Thank you

Sincerely,

Alicia King

E-Rate Coordinator

E-mail: aking@e-ratecentral.com

Web: www.e-ratecentral.com

EXHIBIT 1

E-Rate Central

E-Rate Central / Nassau BOCES
625 Locust Street, Suite 1
Garden City, NY 11530
Tel: 516-832-2881 • Fax: 516-832-2877

Winston E. Himsworth

October 27, 2008

Invoice Deadline Extension Request
Schools and Libraries Division
Box 125 – Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981

Fax: 973-599-6526

FCD Letter:

Applicant Name:	Westbury Union Free School District
Billed Entity Number:	123856
Funding Year:	2006
Form 471 Application Number:	538571 739
Funding Request Number:	1492354

E-Rate Administrators:

As the result of an ongoing billing dispute with Verizon Select Services, we have just uncovered a significant invoicing problem related to the referenced FRN.

For FY 2006, Westbury was receiving WAN services from Verizon Select at an annual cost of \$123,912. A discount of 87% was awarded for this service. Westbury paid the non-discounted portion with the belief and understanding that Verizon Select would be filing a SPI for the discounted portion. This was not done, and Verizon Select is now invoicing Westbury for the remaining \$107,803.44.

One factor complicating this situation is that a small BEAR (for a disbursement of \$864.63) was erroneously filed under this FRN for some miscellaneous long distance charges. This filing set payment mode on this FRN to BEAR, which may have contributed to Verizon Select's failure to file a SPI.

Without canceling the BEAR, repaying the small disbursement, and resetting the payment mode, we are instead proposing to file a second BEAR for the difference (\$106,938.81) and to have Westbury reimburse Verizon Select for the full discounted amount (\$107,803.44).

While we realize that this issue was discovered only belatedly, we are seeking an invoice deadline extension to resolve the problem.

Your assistance in providing this relief would be greatly appreciated. Thank you.

Sincerely,

Winston E. Himsworth
E-Rate Coordinator for Westbury UFSD
Email: whimsworth@e-ratecentral.com

Winston E. Himsworth

From: Winston E. Himsworth [whimsworth@e-ratecentral.com]
Sent: Thursday, March 26, 2009 12:05 PM
To: 'Miller, Kelly'
Subject: RE: Appeal of FRN 1492354 (Westbury Union Free SD)

Thanks. Kelly. You are correct.

The original invoice extension request was wrong, and I just copied it. Sorry.

Winston E. Himsworth
E-Rate Central
(516) 832-2881
whimsworth@e-ratecentral.com
www.e-ratecentral.com

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From: Miller, Kelly [mailto:KFITZGI@sl.universalservice.org]
Sent: Thursday, March 26, 2009 11:19 AM
To: whimsworth@e-ratecentral.com
Subject: Appeal of FRN 1492354 (Westbury Union Free SD)

We have received an appeal of the above FRN, the Form 471 Application Number provided on the appeal letter is 538677; but the FRN provided is not associated with this application number.

The application number associated with the above FRN is application number 538739. Please confirm if this is correct so I may enter your appeal into our system.

Thank you.

Kelly Miller
Program Compliance

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